

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ALLENTEWON TOWNE CENTER
ALLENTEWON, PA. LIMITED PARTNERSHIP,

Plaintiff,

-vs-

SAUCON FITNESS LLC d/b/a ORANGE
THEORY FITNESS, BRIAN BOLCAR,
NED BOLCAR, CAROLYN BOLCAR,
and MICHAEL DEGAETANO,

Defendants.

**NOTICE OF REMOVAL OF
ACTION UNDER
28 U.S.C. § 1332(a)
(DIVERSITY JURISDICTION)**

Civil Action No.: _____

NOTICE OF REMOVAL

Defendants, Saucon Fitness LLC d/b/a Orange Theory Fitness, Brian Bolcar, Carolyn Bolcar, and Michael DeGaetano hereby remove *Allentown Towne Center Allentown, Pa. Limited Partnership v. Saucon Fitness LLC d/b/a Orange Theory Fitness, Brian Bolcar, Ned Bolcar, Carolyn Bolcar and Michael Degaetano*, Index No. E2020003327 from the Supreme Court of the State of New York, County of Monroe, to the United States District Court for the Western District of New York pursuant to 28 U.S.C. § 1446 and as grounds for its removal state as follows:

STATEMENT OF THE CASE

1. On May 22, 2020, Plaintiff Allentown Towne Center Allentown, Pa. Limited Partnership (“Plaintiff”) filed a verified complaint in the Supreme Court of the State of New York, County of Monroe captioned *Allentown Towne Center Allentown, Pa. Limited Partnership v. Saucon Fitness LLC d/b/a Orange Theory Fitness, Brian Bolcar, Ned Bolcar, Carolyn Bolcar and Michael DeGaetano*, Index No. E2020003327 (the “State Court Action”). Copies of the Summons and Verified Complaint are attached as Exhibit B hereto.

2. The Verified Complaint purports to assert three causes of action against Saucon Fitness LLC d/b/a Orange Theory Fitness, Brian Bolcar, Ned Bolcar, Carolyn Bolcar and Michael DeGaetano (collectively, “Defendants”) sounding in breach of Lease, breach of Guaranty, and attorney’s fees and expenses. Plaintiff’s claim is based on the contention that Saucon Fitness LLC d/b/a Orange Theory Fitness (“Saucon Fitness”) failed to pay outstanding rents and fees on a Lease.

3. The relief Plaintiff seeks is an award of damages in the amount of \$1,149,500.04, together with costs, disbursement, and reasonable attorney’s fees.

DIVERSITY JURISDICTION UNDER 28 U.S.C. § 1332(a)

4. This Court has jurisdiction over this matter under 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between Plaintiff and Defendants and more than \$75,000.00, exclusive of interest and costs, is at stake.

5. According to the Verified Complaint, Plaintiff alleges it is a limited partnership licensed and doing business in the State of New York, having its principal office and principal place of business at 270 Commerce Drive, Rochester, New York.

6. Defendant Saucon Fitness is a duly registered Pennsylvania limited liability company, formed on September 28, 2017, with a registered address of 2761 Milan Street, Easton, Pennsylvania, and doing business as Orange Theory Fitness in Allentown, Pennsylvania.

7. According to the Verified Complaint, defendants Brian Bolcar, Ned Bolcar, Carolyn Bolcar, and Michael DeGaetano (collectively, “Individual Defendants”) are individuals residing in the Commonwealth of Pennsylvania.

ALL PROCEDURAL REQUIREMENTS FOR REMOVAL HAVE BEEN SATISFIED

8. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of all process, pleadings, and orders from the State Court Action, which have been served upon Defendants are being filed with this Notice of Removal.

9. This Notice of Removal has been filed within 30 days after the receipt of a copy of the Summons and Verified Complaint by defendant Michael Degaetano, the later-served defendant, on or about June 11, 2020. Removal is therefore timely in accordance with 28 U.S.C. § 1446(b).

10. Upon information and belief, this Notice of Removal has been filed within 30 days of the date that Defendants' Pennsylvania attorney Michael J Brooks, Esq., on behalf of Defendants, was informed by counsel for Plaintiff that a copy of the Summons and Verified Complaint had been served on June 9, 2020.

11. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1441(a) and 1446(a) because the U.S. District Court for the Western District of New York is the federal judicial district embracing the Supreme Court of the State of New York, County of Monroe where the State Court Action was originally filed.

12. Pursuant to Local Rule 81 Defendants are filing with the Notice of Removal:

- (1) a completed civil cover sheet
- (2) the requisite filing fee; and
- (3) The following attachments/exhibits:
 - (A) an index identifying each document filed and/or served in the state court action (*see Exhibit A*); and

(B) each document filed and/or served in the state court action, individually tabbed and arranged in chronological order (*see Exhibit B*).

CONCLUSION

By this Notice of Removal, Defendants do not waive any objection they may have as to service, jurisdiction or venue, or any other defenses or objections they may have to this action. Defendants intend no admission of fact, law or liability by this Notice, and expressly reserves all defenses, motions and/or pleas.

Dated: July 9, 2020
Rochester, New York

PULLANO & FARROW

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